IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

SPL. APPL. WRIT No. 297 of 2001

BHARTIYA SHIKSHA PRACHAR SAMITI & ORS.
V/S
DILKHUSH PALIWAL & ORS

Mr. SG OJHA, for the appellant / petitioner

Mr. MS SINGHVI & Mr. HR SONI, A.G.A., for the respondent

Date of Order : 12.12.2007

HON'BLE SHRI N P GUPTA,J.
HON'BLE SHRI MUNISHWAR NATH BHANDARI,J.

ORDER

This appeal has been filed against the judgment of learned Single Judge dt. 12.2.2001, dismissing the appellant's writ petition.

The writ petition was filed seeking to challenge the order of Rajasthan Non Government Educational Institution Tribunal dt. 20.9.2000. Before the Tribunal the present private respondent had filed application under 21 of the Rajasthan Non Government Educational Institutions Act, 1989, on 8.9.1997, seeking to challenge the order of the present appellant, transferring the applicant before the learned Tribunal, from educational institution at Badnor Ki Haveli, Udaipur, to Vidhya Niketan, Fateh Nagar.

It was contended that the applicant applied for appointment in response to the advertisement issued by the Vidhya Niketan, Badnor Ki Haveli Udaipur, on which she was selected, and in order to avoid payment of summer vacations salary artificial brake in the service were given, and then she has been transferred to Fateh Nagar's school, which is contrary to law. The learned Tribunal found, that the two educational institutions have two different management committees, and at the time of giving appointment to the applicant, it was never agreed by her, that she would be bound by such orders of the institution. Significantly it was also noticed, that even according to the present appellant, the school at Badnor Ki Haveli is an aided school, while school at Fateh Nagar is not an aided school. It was found, that in such circumstances, the present appellant had no right to transfer the applicant. Reliance was also placed by the learned Tribunal, on an earlier judgment of this Court, in Adarsh Vidhya Mandir Vs. Manoj Kumar, being S.B. Civil Writ Petition No. 4780/96, decided on 20.8.97. Interalia with these findings the learned Tribunal quashed the transfer order, and directed the applicant before the learned Tribunal to be given regular pay scale, in view of the judgment in Krishnamacharyalu Vs. Venkteshwar Hindu College, reported in (1997) 3 SCC-571.

While deciding the writ petition, the learned Single Judge found, that in spite of several opportunities

being given, the learned counsel for the appellant could not point out any provision, which enables the petitioner to transfer an employee from one place to another, and in absence of such a power, or enabling provision, no fault can be found with the transfer order.

In this appeal, the appellant has filed an application dt. 4.5.2001, enclosing therewith a document as Annexure-5, claiming, that thereunder the appellant is entitled to transfer the employee. We have looked at this document also, and find, that all that it permits is, that if more than one school is being run by the same Management Committee, then for transferring the teacher in same grade, and pay scale, for such transfer sanction is not required to be taken.

Suffice it to say, that it is not shown, that the Management Committee of the two institutions is same. Obviously under the scheme of things, as contained in the Act of 1989, as found by the learned Tribunal, in para-17, that every recognised educational institution is required to have a separate Management Committee, and such Management Committee shall look after the administration of the concerned school.

In such circumstances, in our view, even Annexure-5 does not help the appellant at all. No other source of

power has been shown, to be vesting with the appellant, to be entitling the appellant to transfer the private respondent from the school Badnor Ki Haveli to Vidhya Niketan, Fateh Nagar. Thus, we do not find any error in the impugned order.

The appeal is, therefore, dismissed.

(MUNISHWAR NATH BHANDARI),J. (N P GUPTA),J.

/Sushil/